



2025:AHC-LKO:49065-DB

**HIGH COURT OF JUDICATURE AT ALLAHABAD A.F.R
LUCKNOW**

WRIT - C No. - 7305 of 2025

M/S Ramesh Dyeing And Washing, Ghaziabad
Thru Proprietor Ramesh Chand

.....Petitioner(s)

Versus

State Of U.P. Thru Prin.Secy. Forest, Environment
And Climate Change Deptt. Lko And Ors.

.....Respondent(s)

Counsel for Petitioner(s)	: Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan, Tarannum Sana
Counsel for Respondent(s)	: C.S.C., Ashok Kumar Verma, Chandra Shekhar Pandey

Court No. - 1

**HON'BLE RAJAN ROY, J.
HON'BLE MANJIVE SHUKLA, J.**

1. Heard learned counsel for the petitioner, Shri Chandra Shekher Pandey, learned counsel for the Central Pollution Control Board, Shri Ashok Verma, learned counsel appearing for U.P. Pollution Control Board and Shri Nishant Shukla, learned Additional Chief Standing Counsel for the State.

2. After hearing the parties and going through the record, what comes out is that by means of this petition the petitioner has challenged two orders, one is dated 12.08.2021 by which closure of the petitioner's industrial unit was ordered and environmental compensation of Rs.14,20,000/- was imposed accordingly. Subsequently, the said order, as also another order dated 25.03.2022, which was in continuation of the earlier order, was revisited and a decision was taken on 28.06.2022 for cancelling the said orders subject to certain conditions, one of which was that the remaining environmental compensation, payable by the petitioner under the earlier orders amounting to Rs.13,20,000/-, would be paid by the petitioner within two months, failing which the closure order will again revive. This order dated 28.06.2022 is also under challenge.

3. It is not out of place to mention that in the interregnum the petitioner

admits to have paid Rs.1,00,000/- towards environmental compensation albeit, as alleged, under compulsion and coercion.

4. The question which has arisen before us is as to whether U.P. Pollution Control Board has jurisdiction to impose such environmental compensation and in this context, contention of petitioner is that the impugned orders having been passed under Section 33A of the Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as “Water Act, 1974”), it did not have any such jurisdiction as the said provision does not vest any such authority/jurisdiction upon the Board to impose environmental compensation. Reliance has been placed in this regard upon judgment of Hon’ble Supreme Court dated 21.01.2022 rendered in ***Civil Appeal No.1046 of 2019; Kantha Vibhag Yuva Koli Samaj Parivartan Trust and others vs. State of Gujarat and others.***

5. Sri A. K. Verma, counsel appearing for U.P. Pollution Control Board as also Sri Chandra Shekhar Pandey, counsel appearing for Central Pollution Control Board submitted that this issue is no more *res integra* as the same has already been considered and decided in favour of the Board albeit in the context of Delhi Pollution Control Committee in ***Civil Appeal No.757-760 of 2013; Delhi Pollution Control Committee vs. Lodhi Property Company Ltd. Etc.*** wherein, it has been held that the Pollution Control Board can impose such environmental compensation in exercise of powers under Section 33A of the Water Act, 1974 and Section 31A of the Air (Prevention and Control of Pollution) Act, 1981. (hereinafter referred to as “the Air Act, 1981” As regards the earlier decision of Hon’ble Supreme Court in ***Kantha Vibhag Yuva Koli Samaj Parivartan Trust and others (supra)***, he submitted that the said judgment does not specifically deal with this issue and therefore it is not applicable, although, he admitted the fact that the NGT also has adjudicatory powers in this regard under Section 15 of National Green Tribunal Act, 2010 (hereinafter referred to “the NGT Act, 2010”) and can impose environmental compensation.

6. Having heard learned counsel for the parties and having perused the records, we find first of all that the orders impugned have been passed under Section 33A of the Water Act, 1974.

7. As regards the decision of Hon'ble the Supreme Court in ***Kantha Vibhag Yuva Koli Samaj Parivartan Trust and others (supra)***, the specific issue as to whether the Pollution Control Boards have the power to impose environmental compensation etc. or not, did not fall for consideration in the said case, in fact, the issue therein was as to whether the NGT could abdicate its adjudicatory powers under the Act, 2010 to the Committees formed by it and in that context it was held that it could not do so. The inference being drawn by the counsel for the petitioner, based on the said judgment, that it is the NGT alone which has adjudicatory powers to determine environmental compensation and impose it, is unfounded. The said judgment is not an authority on the issue involved before us.

8. We have gone through the subsequent decision of Hon'ble the Supreme Court in ***Lodhi Property Company Ltd. (supra)***, wherein the issue falling for our consideration was specifically considered by Hon'ble the Supreme Court of India albeit in the context of Delhi Pollution Control Committee. Relevant paragraphs of the said judgment are quoted hereinbelow:-

“1. The Delhi Pollution Control Committee (DPCC) is in appeal against the judgment of the Division Bench of the High Court holding that it is not empowered to levy compensatory damages in exercise of powers under Section 33A of the Water (Prevention and Control of Pollution) Act, 1974 and Section 31A of the Air (Prevention and Control of Pollution) Act, 1981 on the ground that such an action amounts to imposition of penalty provided for in Chapters VII and VI of the respective Acts, and as such, procedure contemplated thereunder will be the only method for imposing and collecting compensatory damage.

2. Having considered the principles that govern Indian environmental laws, we have held that the environmental regulators, the Pollution Control Boards exercising powers under the Water and Air Acts, can impose and collect restitutionary or compensatory damages in the form of fixed sum of monies or require furnishing of bank guarantees as an ex-ante measure to prevent potential environmental damage. These powers are incidental and ancillary to the empowerment under Sections 33A and 31A of the Water and Air Acts. At the same time, we have directed that the powers must be exercised as per procedure laid down by subordinate legislation incorporating necessary principles of natural justice, transparency and certainty.

8. The core question in these appeals is - whether the regulatory boards can, in exercise of powers under Section 33A of the Water Act and Section 31A of the Air Act, impose and collect as restitutionary and compensatory damages fixed sums of monies or require furnishing bank guarantees as an ex-ante measure towards potential environmental damage?

11. In 1988, both Acts were amended. Notably, through amendments the State Boards were further empowered to give directions under Section 33A of the Water Act and Section 31A of the Air Act. These two provisions are identically worded. Section 33A of the Water Act is as under;

“Section 33A. Power to give directions.—Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.

Explanation.—For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct—

(a) the closure, prohibition or regulation of any industry, operation or process; or

(b) the stoppage or regulation of supply of electricity, water or any other service.”

12. The directions contemplated under Sections 33A and 31A of the Water and Air Acts must be in furtherance of the powers and functions of the Boards and they must be in writing. These provisions, declares that the power to issue directions will include the power to direct closure, prohibition or regulation of any industry, operation or process. Further, this power extends to directing the stoppage or regulation of supply of electricity, water or any other service. The power to give directions has been worded broadly, and it allows the Boards significant flexibility in deciding the nature of directions. The legislative intention of granting these powers through the 1988 amendment can be inferred from the Statement of Objects and Reasons of the Water Act, which reads as follows –

“2. The Water Act is implemented by the Central and State Governments and the Central and State Pollution Control Boards. Over the past few years, the implementing agencies have experienced some more

administrative and practical difficulties in effectively implementing the provisions of the Act. The ways and means to remove these difficulties have been thoroughly examined in consultation with the implementing agencies. Taking into account the views expressed, it is proposed to amend certain provisions of the Act in order to remove such difficulties....

3. The Bill, inter alia, seeks to make the following amendments in the Act, namely:—

....

(iv) in order to effectively prevent water pollution, the penal provisions of the Act are proposed to be made stricter and bring them at par with the punishments prescribed in the Air (Prevention and Control of Pollution) Act, 1981 as amended by Act 47 of 1987;

....

(vi) it is proposed to empower the Boards to give directions to any person, officer or authority including the power to direct closure or regulation of offending industry, operation or process or stoppage or regulation of supply of services such as water and electricity;”

13. Similar objective is expressed for the amendment introduced in the Air Act.

14. An appeal against directions issued under Section 33A of the Water Act by the State Board can be filed before the National Green Tribunal under Section 33B, introduced in 2010. Unlike the Water Act there is no specific Appeal provision against directions issued under Section 31A of the Air Act. This asymmetry must be addressed legislatively.

15. Offences and penalties under the two Acts, and the related procedures, are covered in Chapter VII of the Water Act and Chapter VI of the Air Act. These chapters have undergone significant and substantial amendments. Prior to the amendments, the two Acts stipulated penalties in the form of imprisonment, monetary fine or both for offences under the statute. Courts could only take cognizance of an offence if a complaint was filed by a Board or any officer authorized by it, or by any person who had given notice of the alleged offence and of his intention to make a complaint. No court inferior to that of a Metropolitan Magistrate or a Judicial magistrate of the first class can try an offence punishable under the two Acts. Be that as it may, for the present purpose we have to examine and interpret Sections 33A and 31A of the Water and Air Acts.

16. Our constitutionalism bears the hallmark of an expansive interpretation of fundamental rights. But such creative expansion is only a job half done if the depth of the remedies, consequent upon infringement, remain shallow. In other words, remedial jurisprudence must keep pace with expanding rights and regulatory challenges. It is not sufficient that courts adopt injunctory, mandatory and compensatory remedies, but our regulators also must be empowered in that regard. However, the legislative grammar must be elastic for us to infuse the regulators with power to fashion different remedies. This infusion must also be tempered with the necessary guidelines and parameters of exercise of remedial powers, failing which such infusion would aid arbitrary use. Our firm view is that remedial powers or restitutionary directives are a necessary concomitant of both the fundamental rights of citizens who suffer environmental wrongs and an equal concomitant of the duties of a statutory regulator, which are informed by Part IV A of the constitution. To that extent, the functions and powers of a regulator must be inspired by the obligation in Part IV A and Article 48 A. The State's 'endeavour to protect and improve the environment' will be partial, if it does not encompass a duty to restitute.

17. Of all the duties imposed under Article 51A, the obligation to conserve and protect water and air, is perhaps the most significant, amidst our climate change crisis. The Water Act and the Air Act institutionalised all efforts and actions that need to be taken to protect air that we breathe and water that we consume by creating the Pollution Control Boards. These Boards functioning as our environment regulators are expected to act with institutional foresight by evolving necessary policy perspectives and action plans. Working with perpetual seal and succession, they are to develop and retain institutional memory so that they can act on the basis of the experience, data and information that they would have gathered and processed. Institutional expertise is critical, and these bodies are to employ human resource which have domain expertise and talent. These bodies are intended to maintain institutional integrity by taking independent and objective decisions without governmental or industrial control. These values flow naturally if there is institutional transparency and accountability. It is in this perspective that we need to interpret Section 33A of the Water Act and 31A of the Air Act."

9. Hon'ble Supreme Court of India noticed the distinction between an action for environmental damages for restitution or remediation and imposition of penalties or fines levied at the culmination of a punitive action and in this context referred to the earlier decision in **M.C. Mehta**

and another vs. Union of India and others, (1987) 1 SCC 395 (decided on 20.12.1986). It has then considered the Polluter Pays principle with reference to various decisions including the decision of Hon'ble the Supreme Court in the case of **Indian Council for Enviro Legal Action etc. vs. Union of India and others etc.** reported in **(1996) 3 SCC 212**, wherein, it has been held that according to Polluter Pays principle the responsibility for repairing the damage is that of the offending industry. In that case, Hon'ble the Supreme Court held that powers of the Central Government to issue direction under Section 5 read with Section 3 of the Environmental Protection Act, 1986 include the power to impose cost for remedial measures.

10. It has then referred to another decision of Hon'ble the Supreme Court in **Vellore Citizens Welfare Forum vs Union Of India & Others, (1996) 5 SCC 647**, wherein it has been held that liability for environmental damage includes both compensatory aspect and a restorative or remedial aspect.

11. Most important it has then referred to a judgment of National Green Tribunal in the case of **State Pollution Control Board, Odisha vs. M/s. Swastik Ispat Private Ltd. & others, (2014) SCC Online NGT 13** wherein a distinction was made between a punitive action and a direction to pay environmental damages. In that case, the NGT held that the Pollution Control Board did not act as a consequence of a punitive or penal action but it acted in exercise of the powers vested in it in relation to recalling the conditions of consent and ensuring their implementation while also making compensatory provision for remedying the apprehended wrong to the environment and that such action squarely fell within the power of the Board to prevent and control pollution in consonance with the scheme of the Acts concerned. The decision of the Supreme Court of India in **Lodhi Property Company Ltd. (supra)** approves the decision of the NGT in **M/s Swastik Ispat (supra)** with the observation that the Tribunal correctly interpreted Section 33A of the Water Act and 31A of the Air Act. In para 27, it has summarized the principles elucidated from preceding discussion in the following terms.

27. Based on a review of precedents on this issue, the following legal position emerges –

I. There is a distinction between a direction for payment of

restitutionary and compensatory damages as a remedial measure for environmental damage or as an ex-ante measure towards potential environmental damage on the one hand; and a punitive action of fine or imprisonment for violations under Chapters VII of the Water Act and VI of the Air Act on the other hand.

II. If directions in furtherance of restitutionary and compensatory measures are issued, these are not to be considered as punitive in nature. Punitive action can only be taken through the procedure prescribed in the statute for example under chapters VII and VI of the Water and Air Acts respectively.

III. Indian environmental law has assimilated the principle of Polluter Pays and there is also a statutory incorporation of this principle in our laws. The invocation of this principle is triggered in the situations; i) when an established threshold or prescribed requirement is exceeded or breached, and it does result in environmental damage, ii) when an established threshold or prescribed requirement is not exceeded or breached, nevertheless the act in question results in environmental damage and also iii) when a potential risk or a likely adverse impact to the environment is anticipated, irrespective of whether or not prescribed thresholds or requirements are exceeded or breached.

IV. Environmental regulators have a compelling duty to adopt and apply preventive measures irrespective of actual environmental damage. Ex-ante action shall be taken by these regulators and for this purpose a certain measure in exercise of powers under Sections 33A and 31A of the Water and Air Acts is necessary.

V. The powers of the Boards under Sections 33A and 31A of the Water and Air Acts are identical to that of Section 5 of the Environment Protection Act. Under Section 5, the Central Government or its delegate has the power to issue directions to the polluting industry to pay certain amounts and utilise the said fund for carrying out remedial measures. The Boards are empowered to take similar actions under Sections 33A and 31A of the Acts.”

12. After noticing the distinction between a direction for payment of restitutionary and compensatory damages as a remedial measure for environmental damage or as an ex-ante measure towards potential environmental damage and a punitive action of fine or imprisonment for violations under Chapter-VII of the Water Act, 1974 and Chapter-VI of the Air Act, 1981, it has been observed that if the directions in furtherance of restitutionary and compensatory measures are issued, these are not to be considered as punitive in nature. Punitive action can only be taken through the procedure prescribed in the statute. Environmental regulators such as the Pollution Control Boards have a compelling duty to adopt and apply preventive measures irrespective of

actual environmental damage. Ex-ante action shall be taken by these regulators and for this purpose, certain measure in exercise of powers under Sections 33A and 31A of the Water and Air Act is necessary. It has categorically held that powers of the Boards under Sections 33A of the Water Act, 1974 and 31A of the Air Act, 1981 are identical to that of Section 5 of the Environmental Protection Act, which had been considered in the case of ***Indian Council for Enviro Legal Action etc. (supra)***, as already referred above.

13. It has categorically held that the Boards have similar powers under Sections 33A of the Water Act, 1974 and 31A of the Air Act, 1981 as the Central Government under Section 5 of the Environmental Protection Act, 1986.

14. It has then categorically held that “*we are of the opinion that these regulators in exercise of these powers can impose and collect, as restitutionary or compensatory damages fixed sum of monies or require furnishing bank guarantees as ex-ante measure towards potential or actual environmental damage*”. There is no doubt that Sections 33A of the Water Act, 1974 and 31A of the Air Act, 1981 give the State Boards powers to issue necessary directions for environmental restoration, remediation and compensation and for the payment of costs for the same.

15. It has then observed that the Board’s power under Section 33A of the Water Act, 1974 and Section 31A of the Air Act, 1981 have to be read in light of the legal position on the application of Polluter Pays principle as formulated and explained. This means that the State Board cannot impose environmental damages in case of every contravention or offence under the Water Act and Air Act. It is only when the State Board has made a determination that some form of environmental damage or harm has been caused by erring entity, or the same is so imminent, that the State Board must initiate action under Section 33A of the Water Act, 1974 and Section 31A of the Air Act, 1981. It has emphasized that the exercise of powers by the Board as aforesaid should be guided by transparency and non arbitrariness and also emphasized the necessity of subordinate legislation in the form of rules and regulations to be notified in this regard in light of the said judgment.

16. In view of the said authority, it is no longer *res integra* that the Pollution Control Board has the authority/jurisdiction to impose

environmental compensation. The only reason we had proposed to hear the matter, earlier, was the plea taken by the petitioner that the Board does not have jurisdiction, but now that the legal position has been clarified through Hon'ble Supreme Court in the case of **Lodhi Property Company Ltd. (supra)**, this ground is not available.

17. We may also put it on record that prior to pronouncement of the decision of Hon'ble the Supreme Court in **Lodhi Property Co. Ltd. (supra)** on 04.08.2025 a co-ordinate Bench of this Court had an occasion to decide a similar issue vide judgment dated 17.7.2025, however, in view of subsequent judgment of Hon'ble the Supreme Court directly on the said issue of jurisdiction of the U.P. Pollution Board, we are unable to follow the law discussed and enunciated by the co-ordinate Bench of this Court as we are bound by the dictum of Hon'ble the Supreme Court as envisaged under Article 141 of the Constitution of India. Of course, counsel for petitioner has heavily relied upon the judgment dated 18.05.2022 rendered by Hon'ble Supreme Court in **Writ Petition (Civil) No.433 of 2012; Madhya Pradesh High Court Advocates Bar Association and another vs. Union of India and another** wherein one of the questions under consideration was whether- "whether the National Green Tribunal ousts the High Court's jurisdiction under Sections 14 & 22 of the NGT Act?", which was answered in the negative, as, such jurisdiction of the High Court under Article 226 and 227 is part of the basic structure of the Constitution. Based on the aforesaid, it was contended that even if the Board has the power to impose such compensation, nevertheless, there are other irregularities and illegalities which could be seen by the High Court.

18. On the other hand, learned counsel for Board emphasized upon the judgment of Hon'ble the Supreme Court reported in **(2012) 8 SCC 326; Bhopal Gas Peedith Mahila Udyog and others vs. Union of India and others**, paragraph 40 of which reads as under:-

"40. Keeping in view the provisions and scheme of the National Green Tribunal Act, 2010 (for short "the NGT Act") particularly Sections 14, 29, 30 and 38(5), it can safely be concluded that the environmental issues and matters covered under the NGT Act, Schedule I should be instituted and litigated before the National Green Tribunal (for short "NGT"). Such approach may be necessary to avoid likelihood of conflict of orders between the High Courts and NGT. Thus, in unambiguous terms, we direct that all the matters instituted after coming into force of the NGT Act and which are

covered under the provisions of the NGT Act and/or in Schedule I to the NGT Act shall stand transferred and can be instituted only before NGT. This will help in rendering expeditious and specialised justice in the field of environment to all concerned.”

19. The above quoted judgment has not been considered in the subsequent decision in ***Madhya Pradesh High Court Advocates Bar Association and another (supra)***. Much emphasis was laid by counsel for the Board on the fact that an earlier decision on the subject will prevail if it has not been considered in the subsequent decision of Hon’ble Supreme Court, but without expressing any opinion on this aspect, suffice it to say that even if the judgment in ***Madhya Pradesh High Court Advocates Bar Association and another (supra)*** is to be applied, the fact remains that though jurisdiction of this Court is not ousted, but it is a discretionary jurisdiction and, ordinarily, unless there are exceptional circumstances, such as those mentioned in the decision of Hon’ble Supreme Court in the case of ***Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and others, 1998 8 SCC 1***, the High Court under Article 226 is ordinarily loathe to entertain a writ petition when there is a statutory remedy, as prescribed in this case under Section 16 of the NGT Act, 2010, which has not been availed of. Further, an order dated 28.06.2022 has been challenged by filing this writ petition on 22/23.07.2025 i.e. with a delay of more than three years. Statutory remedy of appeal has not been availed in terms of limitation prescribed under Section 16 of the NGT Act, 2010 and after more than three years this writ petition has been filed challenging the said order.

20. Accordingly, we decline to exercise our discretion to entertain this petition.

21. The writ petition is **dismissed** accordingly.

(Manjive Shukla,J.) (Rajan Roy,J.)

August 21, 2025

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